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AN ACT

RELATING TO HUMAN RIGHTS; EXTENDING THE TIME LIMIT FOR FILING
APPEALS AND GRIEVANCES UNDER THE HUMAN RIGHTS ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 28-1-10 NMSA 1978 (being Laws 1969,
Chapter 196, Section 9, as amended) is amended to read:

"28-1-10. GRIEVANCE PROCEDURE.--

A. A person claiming to be aggrieved by an
unlawful discriminatory practice and a member of the
commission who has reason to believe that discrimination has
occurred may file with the human rights division of the labor
department a written complaint that shall state the name and
address of the person alleged to have engaged in the
discriminatory practice, all information relating to the
discriminatory practice and any other information that may be
required by the commission. All complaints shall be filed
with the division within three hundred days after the alleged
act was committed.

B. The director shall advise the respondent that a
complaint has been filed against the respondent and shall
furnish the respondent with a copy of the complaint. The
director shall promptly investigate the alleged act. If the
director determines that the complaint lacks probable cause,
the director shall dismiss the complaint and notify the

1 complainant and respondent of the dismissal. The complaint
2 shall be dismissed subject to appeal as in the case of other
3 orders of the commission.

4 C. If the director determines that probable cause
5 exists for the complaint, the director shall attempt to
6 achieve a satisfactory adjustment of the complaint through
7 persuasion and conciliation. The director and staff shall
8 neither disclose what has transpired during the attempted
9 conciliation nor divulge information obtained during any
10 hearing before the commission or a commissioner prior to
11 final action relating to the complaint. An officer or
12 employee of the labor department who makes public in any
13 manner information in violation of this subsection is guilty
14 of a misdemeanor and upon conviction shall be fined not more
15 than one thousand dollars (\$1,000) or imprisoned not more
16 than one year.

17 D. A person who has filed a complaint with the
18 human rights division may request and shall receive an order
19 of nondetermination from the director without delay after the
20 division's receipt of the complaint and in jointly filed
21 cases, after the federal complaint has been closed. The
22 order of nondetermination may be appealed pursuant to the
23 provisions of Section 28-1-13 NMSA 1978.

24 E. In the case of a complaint filed by or on
25 behalf of a person who has an urgent medical condition and

1 has notified the director in writing of the test results, the
2 director shall make the determination whether probable cause
3 exists for the complaint and shall attempt any conciliation
4 efforts within ninety days of the filing of the written
5 complaint or notification, whichever occurs last.

6 F. If conciliation fails or if, in the opinion of
7 the director, informal conference cannot result in
8 conciliation and the complainant has not requested a waiver
9 of right to hearing pursuant to the provisions of Subsection
10 J of this section, the commission shall issue a written
11 complaint in its own name against the respondent, except that
12 in the case of a complaint filed by or on behalf of a person
13 who has an urgent medical condition, who has notified the
14 director in writing of the test results and who so elects,
15 the director shall issue an order of nondetermination, which
16 may be appealed pursuant to the provisions of Section 28-1-13
17 NMSA 1978. The complaint shall set forth the alleged
18 discriminatory practice, the secretary's regulation or the
19 section of the Human Rights Act alleged to have been violated
20 and the relief requested. The complaint shall require the
21 respondent to answer the allegations of the complaint at a
22 hearing before the commission or hearing officer and shall
23 specify the date, time and place of the hearing. The hearing
24 date shall not be more than fifteen or less than ten days
25 after service of the complaint. The complaint shall be

1 served on the respondent personally or by registered mail,
2 return receipt requested. The hearing shall be held in the
3 county where the respondent is doing business or the alleged
4 discriminatory practice occurred.

5 G. Within one year of the filing of a complaint by
6 a person aggrieved, the commission or its director shall:

7 (1) dismiss the complaint for lack of
8 probable cause;

9 (2) achieve satisfactory adjustment of the
10 complaint as evidenced by order of the commission; or

11 (3) file a formal complaint on behalf of the
12 commission.

13 H. Upon the commission's petition, the district
14 court of the county where the respondent is doing business or
15 the alleged discriminatory practice occurred may grant
16 injunctive relief pending hearing by the commission or
17 pending judicial review of an order of the commission so as
18 to preserve the status quo or to ensure that the commission's
19 order as issued will be effective. The commission shall not
20 be required to post a bond.

21 I. For purposes of this section, "urgent medical
22 condition" means any medical condition as defined by an
23 appropriate medical authority through documentation or by
24 direct witness of a clearly visible disablement that poses a
25 serious threat to the life of the person with the medical

1 condition.

2 J. The complainant may seek a trial de novo in the
3 district court in lieu of a hearing before the commission,
4 provided the complainant requests from the director, in
5 writing, a waiver of complainant's right to hearing within
6 sixty days of service of written notice of a probable cause
7 determination by the director. The director shall approve
8 the waiver request and shall serve notice of the waiver upon
9 the complainant and respondent. The complainant may request
10 a trial de novo pursuant to Section 28-1-13 NMSA 1978 within
11 ninety days from the date of service of the waiver. Issuance
12 of the notice shall be deemed a final order of the commission
13 for the purpose of appeal pursuant to Section 28-1-13 NMSA
14 1978."

15 Section 2. Section 28-1-13 NMSA 1978 (being Laws 1969,
16 Chapter 196, Section 12, as amended) is amended to read:

17 "28-1-13. APPEAL.--

18 A. A person aggrieved by an order of the
19 commission may obtain a trial de novo in the district court
20 of the county where the discriminatory practice occurred or
21 where the respondent does business by filing a notice of
22 appeal within ninety days from the date of service of the
23 commission's order. A copy of the notice of appeal shall be
24 served personally or by certified mail, return receipt
25 requested, at their last known address on all parties who

1 appeared before the commission and shall also be served at
2 the division office in Santa Fe. An order of the commission
3 shall not be superseded or stayed during the appeal unless
4 the district court so directs after notice to the commission
5 and a hearing.

6 B. If testimony at the hearing was transcribed,
7 the division shall, upon receipt of the notice of appeal,
8 file so much of the transcript of the record as the parties
9 requesting the transcript designate as necessary for the
10 appeal with the district court.

11 C. Upon appeal, either party may request a jury.
12 The jurisdiction of the district court is exclusive and its
13 judgment is final, subject to further appeal to the court of
14 appeals.

15 D. In any action or proceeding under this section,
16 if the complainant prevails, the court in its discretion may
17 allow actual damages and reasonable attorney fees and the
18 state shall be liable the same as a private person."

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